

## **FISH and WILDLIFE COMMISSION AGENDA ITEM COVER SHEET**

**Meeting Date:** November 13, 2014 **Agenda Item:** Marias River WMA Access Settlement - Final

**Division:** Legal **Action Needed:** Final **Time Needed on Agenda for this Presentation:** 45 Minutes

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**Background:** The Marias River WMA is located nine miles southwest of Shelby along the Marias River in Toole and Pondera counties. The Marias River runs the entire 14-mile length of the property with wide riparian habitats and associated river breaks, all composed primarily of native habitat. Existing public access points on the north side of the WMA only reach the WMA boundary and do not provide vehicle access to the river bottom. No access—either public or administrative—is currently possible to the east side, where the WMA headquarters is located, pending a settlement or court’s determination otherwise.

The current lawsuit between Wanken Farms, and Troy Wanken (“Wankens”) and FWP is centered on the question of whether historic use created an implied easement for access to the Marias River WMA on the east side via the Lincoln Road. In April 2013, a court-ordered mediation resulted in a negotiated settlement agreement between the parties that was ultimately rejected by the Commission, citing concerns about the limited nature of the access that was negotiated. FWP and the Wankens negotiated an alternative settlement, with Commissioners Stuker and Tourtlotte participating in the settlement negotiations. Changes from the previously proposed settlement include:

- FWP will transfer approximately 483 acres to Wanken Farms, shown on the attached map. Though this is an increase in acreage compared to the previous settlement, FWP will retain the right of public access and recreational use on that property. The previous settlement did not include any recreational public access on the property to be deeded to Wankens.
- FWP grants the Wankens the opportunity to match the high bid for any grazing lease on the WMA.
- Wanken Farms and Troy Wanken grant an easement for public recreational access on the Lincoln Road from April 1 to January 15 of each year. The previously negotiated settlement limited access solely for hunting and only from the beginning of archery season to the end of big game season.
- Access on the Lincoln Road will be administered by FWP through a reservation only system. The number of reservations per day varies seasonally from 5 reservations per day to 15 reservations per day. The previously proposed settlement limited access to 3 day use and 3 overnight parking spots.

**Public Involvement Process & Results:** On September 15, 2014, the Department initiated a three week public comment period (September 15-October 3) seeking comments on the proposed agreement. At the October Commission meeting, the Commission directed the Department to seek further public comment, which it is currently in the process of doing.

**Alternatives and Analysis:** The Commission may approve or deny the proposed settlement. With approval, FWP and the public would gain needed access to the east side of the WMA and the river bottom while retaining recreational public access on the portions of land to be deeded to Wanken Farms and Troy Wanken. If denied, the lawsuit and counter suit would continue, with both administrative and public access in question. Negotiating an additional alternative settlement is unlikely.

**Agency Recommendation & Rationale:** The Department recommends approval of the Marias River WMA access settlement agreement, in order to gain needed public and administrative access to the Marias River WMA on its east side. If approved, this settlement and land transfer would need approval by the Board of Land Commissioners, which would be scheduled for their December meeting.

**Proposed Motion:** I move the Commission APPROVE the proposed Marias River WMA access settlement agreement.